

SENATE BILL No. 831

November 5, 2003, Introduced by Senator GEORGE and referred to the Committee on Health Policy.

A bill to amend 1978 PA 368, entitled
"Public health code,"
(MCL 333.1101 to 333.25211) by adding part 97.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

PART 97.

MICHIGAN PHARMACEUTICAL BEST PRACTICES INITIATIVE

Sec. 9701. As used in this part:

(a) "Committee" means the Michigan pharmacy and therapeutics
committee established by Executive Order No. 2001-8 and by
section 9705.

(b) "Department" means the department of community health.

(c) "Drug" means that term as defined in section 17703.

(d) "Initiative" means the pharmaceutical best practices
initiative established by this part.

(e) "Medicaid" means the program of medical assistance

1 established under title XIX of the social security act, chapter
2 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6,
3 and 1396r-8 to 1396v.

4 (f) "Pharmacist" means an individual licensed by this state
5 to engage in the practice of pharmacy under article 15.

6 (g) "Physician" means an individual licensed by the state to
7 engage in the practice of medicine or osteopathic medicine and
8 surgery under article 15.

9 (h) "Prescriber" means a licensed dentist, a licensed doctor
10 of medicine, a licensed doctor of osteopathic medicine and
11 surgery, a licensed doctor of podiatric medicine and surgery, a
12 licensed optometrist certified under part 174 to administer and
13 prescribe therapeutic pharmaceutical agents, or another licensed
14 health professional acting under the delegation and using,
15 recording, or otherwise indicating the name of the delegating
16 licensed doctor of medicine or licensed doctor of osteopathic
17 medicine and surgery.

18 (i) "Prescription" means that term as defined in section
19 17708.

20 (j) "Prescription drug" means that term as defined in section
21 17708.

22 (k) "Type II transfer" means that term as defined in section
23 3 of the executive organization act of 1965, 1965 PA 380, MCL
24 16.103.

25 Sec. 9703. (1) The department may implement a
26 pharmaceutical best practices initiative to control the costs of
27 health care, to reduce the costs of prescription drugs, and to

1 assure continued access to pharmaceutical services at fair and
2 reasonable prices. If implemented, the initiative shall include,
3 but is not limited to, the establishment and maintenance of each
4 of the following:

5 (a) A preferred drug list.

6 (b) A prior authorization and appeal process.

7 (2) The prior authorization and appeal process established
8 under subsection (1) shall include the establishment of a
9 telephone hotline for prescribers that is accessible 24 hours per
10 day and staffed to ensure that a response is initiated to each
11 prior authorization request within 24 hours after its receipt and
12 to each appeal of a prior authorization denial within 48 hours
13 after all necessary documentation for reconsideration is
14 received. Each appeal for reconsideration of a previous denial
15 for prior authorization shall be reviewed and decided by a
16 physician.

17 (3) The department, in cooperation with a pharmaceutical
18 manufacturer or its agent, may establish disease management and
19 health management programs that shall be provided, as negotiated,
20 by the pharmaceutical manufacturer or its agent instead of a
21 supplemental rebate for the inclusion of certain products
22 manufactured by that pharmaceutical manufacturer on the
23 department's preferred drug list. If the department negotiates a
24 plan for the provision of services by the pharmaceutical
25 manufacturer instead of a supplemental rebate as provided under
26 this subsection, the department shall include in the report
27 required under section 9711 the effectiveness of the programs

1 being offered and the savings incurred as a result of those
2 programs being provided instead of supplemental rebates.

3 (4) The department may hire or retain contractors,
4 subcontractors, advisors, consultants, and agents and may enter
5 into contracts necessary or incidental to implement this part and
6 carry out its responsibilities and duties.

7 (5) The department may promulgate rules to implement this
8 part and to ensure compliance with the published medicaid
9 bulletin that initiated this initiative.

10 Sec. 9705. (1) The Michigan pharmacy and therapeutics
11 committee, established by Executive Order No. 2001-8, is
12 transferred to the department as a type II transfer. The
13 committee shall consist of 11 members appointed by the governor
14 as follows:

15 (a) Six physicians who accept a significant proportion of
16 patients eligible for medicaid. The governor shall make this
17 appointment from a list of physicians recommended by the Michigan
18 state medical society and the Michigan osteopathic association.
19 The list of recommended physicians may include, but is not
20 limited to, a physician with expertise in mental health, a
21 physician who specializes in pediatrics, and a physician with
22 experience in long-term care.

23 (b) Five pharmacists who receive a significant proportion of
24 their business from individuals eligible for medicaid. The
25 governor shall make this appointment from a list of pharmacists
26 recommended by the Michigan pharmacists association and the
27 Michigan retailers association. The list of recommended

1 pharmacists may include, but is not limited to, a pharmacist with
2 expertise in mental health drugs, a pharmacist who specializes in
3 pediatrics, and a pharmacist with experience in long-term care.

4 (2) Members of the committee shall serve a term of 2 years,
5 except as otherwise provided for members first appointed. Of the
6 members first appointed under subsection (1), 3 physician members
7 and 2 pharmacist members shall be appointed for a term of 1
8 year. The governor shall designate 1 member of the committee to
9 serve as the chairperson of the committee. This member shall
10 serve as chairperson at the pleasure of the governor. An
11 individual appointed to serve as a physician or pharmacist member
12 of the committee may serve only while maintaining his or her
13 professional license in good standing. An individual physician's
14 or pharmacist's failure to maintain his or her professional
15 license in good standing immediately terminates that individual's
16 membership on the committee. One example of not maintaining a
17 professional license in good standing is if the department
18 imposes a sanction under article 15 on a physician or pharmacist
19 committee member. A vacancy on the committee shall be filled in
20 the same manner as the original appointment. An individual
21 appointed to fill a vacancy created other than by expiration of a
22 term shall be appointed for the unexpired term of the member whom
23 he or she is to succeed in the same manner as the original
24 appointment. A member may be reappointed for additional terms.

25 (3) The committee has the powers, duties, and
26 responsibilities prescribed in Executive Order No. 2001-8 and
27 shall operate pursuant to and in accordance with Executive Order

1 No. 2001-8.

2 (4) Members of the committee shall serve without
3 compensation, but shall be reimbursed for necessary travel and
4 other expenses pursuant to the standard travel regulations of the
5 department of management and budget.

6 (5) The committee may promulgate rules governing the
7 organization, operation, and procedures of the committee. A
8 majority of the members serving constitute a quorum for the
9 transaction of business. The committee shall approve a final
10 action of the committee by a majority vote of the members. A
11 member of the committee must be present at a meeting of the
12 committee in order to vote. A member shall not delegate his or
13 her responsibilities to another individual.

14 (6) The committee shall meet at the call of the chairperson
15 and as otherwise provided in the rules promulgated by the
16 committee or the department. The committee may meet at any
17 location within this state. A meeting of the committee is
18 subject to the open meetings act, 1976 PA 267, MCL 15.261 to
19 15.275. The committee shall post a notice of the meeting on the
20 department's website 14 days before each meeting date. By
21 January 31 of each year, the committee shall make available the
22 committee's regular meeting schedule and meeting locations for
23 that year on the department's website. The committee may make
24 inquiries, conduct studies and investigations, hold hearings, and
25 receive comments from the public.

26 Sec. 9707. The committee shall be advisory in nature and
27 shall assist the department with the following functions pursuant

1 to applicable state and federal law:

2 (a) Advise and make recommendations to the department for the
3 inclusion of prescription drugs on the preferred drug list based
4 on the potential impact on patient care, the potential fiscal
5 impact on all medicaid covered services, and sound clinical
6 evidence found in labeling, drug compendia, and peer-reviewed
7 literature pertaining to use of the drug in the relevant
8 population.

9 (b) Advise the department on issues affecting prescription
10 drug coverage for the department's various health care programs.

11 (c) Recommend to the department guidelines for prescription
12 drug coverage under the department's various health care
13 programs.

14 (d) Develop a process to collect and analyze information
15 about new prescription drugs. The department shall post this
16 process and the necessary forms on the department's website.

17 (e) Recommend to the department strategies to improve the
18 initiative.

19 Sec. 9709. (1) Except as otherwise provided by law or in
20 this part, a prescriber shall obtain prior authorization for
21 drugs that are not included on the department's preferred drug
22 list. If the prescriber's prior authorization request is denied,
23 the department or the department's agent shall inform the
24 requesting prescriber of his or her option to speak to the
25 agent's physician on duty regarding his or her request. If
26 immediate contact with the agent's physician on duty cannot be
27 arranged, the department or the department's agent shall inform

1 the requesting prescriber of his or her right to request a
2 72-hour supply of the nonauthorized drug.

3 (2) The department or the department's agent shall provide
4 authorization for prescribed drugs that are not on its preferred
5 drug list if the prescribing physician verifies that the drugs
6 are necessary for the continued stabilization of the patient's
7 medical condition as initial therapy or following documented
8 previous failures on earlier prescription regimens.
9 Documentation of necessity or previous failures may be provided
10 by telephone, facsimile, or electronic transmission.

11 (3) The department or the department's agent shall provide
12 authorization for a prescribed drug that is not on its preferred
13 drug list if the prescribing physician has achieved advanced
14 specialization training and is certified by that respective
15 specialty board as a specialist and provides documentation of his
16 or her certification and that drug is generally recognized as a
17 drug in a class commonly prescribed in that area of
18 specialization or is in a class of drugs that a physician
19 certified in that area of specialization has an advanced level of
20 knowledge about.

21 (4) A single source covered outpatient drug that is approved
22 by the federal food and drug administration shall be included by
23 the department on the preferred drug list unless the committee
24 advises the department that the drug should be removed from the
25 preferred drug list.

26 (5) A patient who is under a court order for a particular
27 prescription drug or who is currently under medical treatment and

1 whose condition has been stabilized under a given prescription
2 regime before becoming a recipient of medicaid is exempt from the
3 prior authorization process and may continue on that medication
4 for the duration of the order or for the current course of
5 treatment.

6 Sec. 9711. (1) The department shall provide to the members
7 of the house and senate appropriations subcommittees on community
8 health an annual written report on the impact of the
9 pharmaceutical best practice initiative on the medicaid
10 community. The report shall include, but is not limited to, the
11 number of appeals used in the prior authorization process and any
12 reports of patients who are hospitalized because of an
13 authorization denial.

14 (2) The department shall provide a written report to the
15 members of the house and senate appropriations subcommittees on
16 community health and the house and senate fiscal agencies
17 identifying the prescribed drugs that are grandfathered in as
18 preferred drugs and available without prior authorization and the
19 population groups to which they apply. The report shall assess
20 strategies to improve the drug prior authorization process.